

Before the
Office of the United States Trade Representative
Washington, D.C.

In re 2024 Review of Notorious Markets
for Counterfeiting and Piracy: Comment
Request

Docket No. USTR-2024-0013

**REPLY COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

Pursuant to the request for comments published by the Office of the United States Trade Representative (USTR) in the Federal Register at 89 Fed. Reg. 66,754 (Aug. 16, 2024), the Computer & Communications Industry Association (CCIA) submits the following Reply Comments for the 2024 Review of Notorious Markets for Counterfeiting and Piracy.¹

U.S. internet services continue to devote significant resources to improving existing measures, as well as deploying new tools, to address counterfeits and piracy online. This includes technology to proactively detect and remove infringing content, investment in human capital to review reported content, and tools for rights holders to monitor and report infringement. These companies extensively collaborate and consult with rights holders, trade organizations, governments, creators, and other industry stakeholders and have established programs that encourage information sharing between all stakeholders to strengthen enforcement.

While some comments made in the consultation suggest that USTR should include U.S. internet companies in the 2024 Notorious Markets Report,² USTR should disregard comments

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² Comments of AAFA, *In Re* 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0026> (naming Meta's platforms); Comment of Transnational Alliance to Combat Illicit Trade Coalition, *In Re* 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0025> (naming Meta and Amazon); Comments of Union des Fabricants (UNIFAB), *In Re* 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0008> (naming Meta, eBay, Cloudflare, and Amazon); Comments of the Alliance for Safe Online Pharmacies (ASOP Global), *In Re* 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024,

that (1) ask USTR to expand the scope of the Notorious Markets Report beyond the statutory purpose of the Special 301 process; and (2) ignore the practices used by a broad set of U.S. internet and e-commerce marketplaces to address intellectual property (IP) infringement online. In doing so, USTR can recognize the robust anti-counterfeit and anti-piracy practices used by U.S. internet companies, encourage greater collaboration between these companies and rights owners, and ensure that the Notorious Markets Report continues to focus on bad actors in foreign markets, as it did in the 2022 and 2023 Reviews.³

I. The Purpose of the Notorious Markets Report, Under the Auspices of the Special 301 Process, Is to Identify Bad Actors in Foreign Markets.

The Special 301 Process is a tool by which to identify foreign markets that fail to provide adequate intellectual property protection and market access for those actors relying on intellectual property. Section 182 of the Trade Act of 1974, as amended, codified at 19 U.S.C. § 2242, establishes the Special 301 process. The law directs USTR to identify “*foreign countries*” that “(a) deny adequate and effective protection of intellectual property rights, or (b) deny fair and equitable market access to United States persons that rely upon intellectual property protection [emphasis added].” Section 2242(d)(2) further states that a “*foreign country* denies adequate and effective protection of intellectual property rights if the *foreign country* denies adequate and effective means under the laws of the *foreign country* for persons who are not citizens or nationals of such *foreign country* to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works [emphasis added].” Further, the directives in § 2242(h) to USTR to compile the annual Report only contemplate foreign markets. That the Special 301 process must be focused on “foreign countries” is not ambiguous and the parameters for consideration were clearly defined under this trade tool.

The Notorious Markets for Counterfeiting and Piracy Review is now conducted as an Out-of-Cycle Review (OCR) under the Special 301 process pursuant to the 2010 Joint Strategic

<https://www.regulations.gov/comment/USTR-2024-0013-0012> (naming Meta, X, and Cloudflare); Comment of the Recording Industry Association of America, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0019> (naming Amazon and eBay).

³ OFFICE OF THE U.S. TRADE REP., 2022 Review of Notorious Markets for Counterfeiting and Piracy, [https://ustr.gov/sites/default/files/2023-01/2022%20Notorious%20Markets%20List%20\(final\).pdf](https://ustr.gov/sites/default/files/2023-01/2022%20Notorious%20Markets%20List%20(final).pdf) (declining to include Meta or Amazon). OFFICE OF THE U.S. TRADE REP., 2023 Review of Notorious Markets for Counterfeiting and Piracy, https://ustr.gov/sites/default/files/2023_Review_of_Notorious_Markets_for_Counterfeiting_and_Piracy_Notorious_Markets_List_final.pdf (declining to include Meta, Amazon, or eBay).

Plan on Intellectual Property Enforcement.⁴ OCRs have been used to study countries to monitor their progress on intellectual property issues, which may result in status changes for the following year's Special 301 report. Previously, sections on "Notorious Markets" were included in the Special 301 Report itself (starting in 2006), which, again, only included foreign virtual and physical markets.⁵ The Notorious Markets were treated as separate OCRs since 2010, with the first report issued in February 2011. Per the 2010 Joint Strategic Plan on Intellectual Property Enforcement, the Notorious Markets list is to identify "foreign" marketplaces. The text states:

Identify Foreign Pirate Websites as Part of the Special 301 Process: Included in USTR's annual Special 301 report is the Notorious Markets list, a compilation of examples of Internet and physical markets that have been the subject of enforcement action or that may merit further investigation for possible intellectual property infringements.⁶

Finally, USTR's Federal Register Notices have regularly explained that the Notorious Markets List is to identify foreign online and physical markets.⁷

⁴ Executive Office of the President of the United States, 2010 Joint Strategic Plan on Intellectual Property Enforcement (June 2010), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/intellectualproperty/intellectualproperty_strategy_plan.pdf [hereinafter "2010 Joint Strategic Plan on IP Enforcement"].

⁵ OFFICE OF THE U.S. TRADE REP., 2006 Special 301 Report, https://ustr.gov/archive/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file473_9336.pdf.

⁶ 2010 Joint Strategic Plan on IP Enforcement at 9.

⁷ See, e.g., 2010 Fed. Reg. Notice ("USTR is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States."), <https://www.federalregister.gov/documents/2010/10/01/2010-24710/2010-special-301-out-of-cycle-review-of-notorious-markets-request-for-public-comment>; 2011 Fed. Reg. Notice ("USTR is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States and that may be included in the 2011 Notorious Markets List."), <https://www.federalregister.gov/documents/2011/09/22/2011-24523/2011-special-301-out-of-cycle-review-of-notorious-markets-request-for-public-comments>; 2012 Fed. Reg. Notice ("USTR is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States and that may be included in the 2012 Notorious Markets List."), <https://www.federalregister.gov/documents/2012/08/14/2012-19840/2012-special-301-out-of-cycle-review-of-notorious-markets-request-for-public-comments>; 2013 Fed. Reg. Notice ("The Office of the United States Trade Representative (USTR) is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States and that may be included in the 2013 Notorious Markets List."), <https://www.federalregister.gov/documents/2013/09/20/2013-22857/2013-special-301-out-of-cycle-review-of-notorious-markets-request-for-public-comments>; 2014 Fed. Reg. Notice ("The Office of the United States Trade Representative (USTR) requests written comments from the public identifying Internet and physical markets based outside the United States that should be included in the 2014 Notorious Markets List."), <https://www.federalregister.gov/documents/2014/09/26/2014-22904/2014-special-301-out-of-cycle-review-of-notorious-markets-request-for-public-comments>; 2015 Fed. Reg. Notice ("The Office of the United States Trade Representative (USTR) requests written comments from the public identifying Internet and physical markets based outside the United States that should be included in the 2015 Notorious Markets List."),

It is clear that this tool is designed to focus on bad actors operating in foreign markets and commenters' recommendations to include U.S. companies are outside the scope of the Special 301 process. Calls from proponents to include U.S.-based and U.S.-owned online markets in the 2024 Report should be rejected as they undermine the effectiveness of USTR to use the Report to engage with trading partners per its mission.

II. Commenters Do Not Satisfy Requirements for Nominating U.S. Services.

Even if the Special 301 statute could be interpreted to apply to U.S. companies, comments filed in nominating these U.S. services have not met the requirements for identification as a notorious market. Per the Federal Register notice, submissions that nominate a market for inclusion must provide sufficient details on the market at issue.⁸

For online markets that engage in or facilitate substantial counterfeiting, USTR directed commenters to include information such as:

- Estimate of the number of goods sold or otherwise made available on the market and any other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods.
- Estimate of the number and types of goods sold or otherwise made available on the market that are counterfeit, either in aggregate or in relation to the total number and types of goods sold or otherwise made available on the market, a description of the methodology used to create the estimate and the timeframe the estimate was conducted,

<https://www.federalregister.gov/documents/2015/09/10/2015-22761/2015-special-301-out-of-cycle-review-of-notorious-markets-request-for-public-comments>; 2016 Fed. Reg. Notice ("The Office of the United States Trade Representative (USTR) requests written comments identifying Internet and physical markets based outside the United States that should be included in the 2016 Notorious Markets List."), <https://www.federalregister.gov/documents/2016/08/25/2016-20325/2016-special-301-out-of-cycle-review-of-notorious-markets-request-for-comments>; 2017 Fed. Reg. Notice ("The Office of the United States Trade Representative (USTR) requests written comments that identify online and physical markets based outside the United States that should be included in the 2017 Notorious Markets List."), <https://www.federalregister.gov/documents/2017/08/16/2017-17287/2017-special-301-out-of-cycle-review-of-notorious-markets-comment-request>; 2018 Fed. Reg. Notice ("The Office of the United States Trade Representative (USTR) requests written comments that identify online and physical markets based outside the United States that should be included in the 2018 Notorious Markets List."), <https://www.federalregister.gov/documents/2018/08/16/2018-17649/2018-special-301-out-of-cycle-review-of-notorious-markets-comment-request>; 2019 Fed. Reg. Notice ("Conducted under the auspices of the Special 301 program, the Notorious Markets List identifies examples of online and physical markets based outside the United States that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting."), <https://www.federalregister.gov/documents/2019/08/19/2019-17731/2019-special-301-out-of-cycle-review-of-notorious-markets-comment-request>.

⁸ 88 Fed. Reg. 58,056 (Aug. 24, 2023).

and information supporting the claims of counterfeiting.

- Estimate of economic harm to right holders resulting from the counterfeit goods and a description of the methodology used to calculate the harm.
- Whether the number and types of counterfeit goods or the economic harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.

Without this level of detail—which none of the commenters who sought U.S. internet companies’ inclusion included in their comments—USTR’s task of reviewing such input and gaining a real sense for whether the claims really met the putative threshold for inclusion in the Notorious Markets Report (*i.e.* “practices that have significant adverse impact on the value of U.S. innovation”) is extremely difficult. As such, these comments should not be received as sufficient for including these companies in the Notorious Markets Report.

Further, some claims made in commenter submissions are simply untrue. One commenter claimed that “actions are all reactionary and solely dependent upon brand’s reporting. Any requests for proactive measures are ignored.”⁹ In fact, as explained further below in Section III, U.S. internet and e-commerce firms invest significantly in proactive enforcement and remove millions of listings and pieces of content before they are ever reported. The commenter also alleged that there have been “no improvements” to reporting tools in 2023-2024.¹⁰ As explained below, however, e-commerce firms have made several improvements over the years including the streamlining of policies, the incorporation of new AI technology, and new tooling functionalities.

III. U.S. Internet and E-Commerce Firms Devote Significant Resources and Partner with Brand Owners to Address Counterfeits.

The internet has revolutionized the retail industry. The share of e-commerce to retail sales continues to rise each year.¹¹ Retailers are increasingly digital, and are able to utilize internet services to connect users and firms to new customers around the world. The internet

⁹ Comments of AAFA, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0026> at 13.

¹⁰ *Id.* at 20.

¹¹ See MCKINSEY, *How e-commerce share of retail soared across the globe: A look at eight countries* (Mar. 5, 2021), <https://www.mckinsey.com/featured-insights/coronavirus-leading-through-the-crisis/charting-the-path-to-the-next-normal/how-e-commerce-share-of-retail-soared-across-the-globe-a-look-at-eight-countries>; Federal Reserve Bank of St. Louis, *E-Commerce Retail Sales as a Percent of Total Sales* (accessed Oct. 3, 2024), <https://fred.stlouisfed.org/series/ECOMPCTSA>.

also empowers small businesses to reach new markets and even individual users to sell or resell goods—these benefits help generate the \$541 billion and nearly six million jobs in the United States that come from small businesses’ exports.¹² These interactions are not possible without user trust in online services. Internet companies across the spectrum devote significant resources to maintaining trust in online purchases. Combating counterfeit and pirated goods online is central to these efforts.

As CCIA has documented in related filings to the U.S. government,¹³ internet firms take the challenge of addressing the sale of counterfeit and pirated goods online seriously and invest heavily in programs and enforce company policies against counterfeits and pirated goods. Online services also engage with rights holders and brand owners extensively and have established programs that encourage information sharing between stakeholders and allow online services to identify and remove counterfeit and pirated goods from their platforms. A collaborative approach that continues to bring together brand owners, online services, and policymakers will make these efforts most effective, as recognized by the 2019 Memorandum on Combating Trafficking in Counterfeit and Pirated Goods.¹⁴

Existing measures taken by companies include the following:¹⁵

- **Brand registration programs.** E-commerce-focused firms allow trademark or brand owners to voluntarily enroll in brand registration programs, which allow the service to better utilize automated tools to identify and remove confirmed counterfeit products.¹⁶

Through enrollment, the owners provide relevant information to the service about their

¹² U.S. Chamber of Commerce, *Growing Small Business Exports: How Technology Strengthens American Trade* (accessed Oct. 3, 2024), <https://americaninnovators.com/small-business-exports/>.

¹³ See, e.g., Comments to Patent & Trademark Off., Future Strategies in Anticounterfeiting and Antipiracy, filed Aug. 24, 2023, <https://www.regulations.gov/comment/PTO-C-2023-0006-0053>; Comments to Dep’t of Commerce, In Re Comment Request: Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations, filed July 29, 2020, <https://www.ccianet.org/wp-content/uploads/2019/07/DOC-2019-0003-0001-CCIA-Comments-Counterfeiting-Pirated-Goods-Trafficking-Report.pdf>.

¹⁴ Memorandum on Combating Trafficking in Counterfeit and Pirated Goods (Apr. 3, 2019), <https://www.whitehouse.gov/presidential-actions/memorandum-combating-trafficking-counterfeit-pirated-goods/>, Section 1(e).

¹⁵ This is an illustrative list and does not purport to identify all tools and programs utilized by Internet and e-commerce services.

¹⁶ See, e.g., Amazon Brand Registry, <https://brandservices.amazon.com/>; eBay Verified Rights Owners Program (VeRO), <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html>; Meta’s Brand Rights Protection, <https://www.facebook.com/business/help/828925381043253?id=4533021280101097>.

products that better enables the service to proactively address counterfeits around the world.¹⁷

- **Simplified notice and removal procedures.** Online services have worked to make their reporting processes as efficient and easy as possible to facilitate swift removal of content that violates company policy.¹⁸ Companies comply with requisite obligations under current law regarding trademarks and content protected by U.S. copyright law,¹⁹ and many online services exceed these obligations with online tools providing verified rights holders priority access to tools for expeditiously flagging and removing potentially infringing products.²⁰
- **Collaboration with brand owners.** Online services work with brand owners and rights holders through expanded programs that build upon tools like brand registration. For example, some programs grant more control to trusted and verified brand owners regarding the identification and removal of counterfeit goods.²¹ Tools like “product serialization” have also recently been introduced, which allow manufacturers to attribute a unique code to each product which is then verified by the online marketplace intermediary to confirm authenticity.²² Additionally, some online services engage regularly with rights owners and brands to share insights that can improve enforcement and to pilot new technologies.²³
- **Transparency reports and information sharing.** Some services release reports

¹⁷ See, e.g., Amazon, Brand Protection Report, <https://brandservices.amazon.com/progressreport>.

¹⁸ Examples include YouTube’s Content ID and Copyright Match Tool, Google’s Trusted Copyright Removal Program, Meta’s Rights Manager and Brand Rights Protection, and Pinterest’s Content Claiming Portal.

¹⁹ See generally Facebook Help Center, What is a Counterfeit?, <https://www.facebook.com/help/962020680598166>; Google Ads, Counterfeit Policy, <https://support.google.com/adspolicy/answer/176017>; Google Shopping, Counterfeit Policy, <https://support.google.com/merchants/answer/6149993>.

²⁰ See, e.g., Meta’s Brand Rights Protection, <https://www.facebook.com/business/help/828925381043253?id=4533021280101097>.

²¹ See Amazon, Project Zero, <https://brandservices.amazon.com/projectzero>; Chaim Gartenberg, *Amazon’s Project Zero Will Let Brands Remove Counterfeit Listings of Their Products*, THE VERGE (Feb. 28, 2019), <https://www.theverge.com/2019/2/28/18244603/amazon-projectzero-counterfeit-listing-remove-products>; Meta, Brand Rights Protection, <https://www.facebook.com/business/news/ip-reporting-api-brand-rights-protection-new-features>.

²² See, e.g., Dharmesh M. Mehta, *Amazon Project Zero* (Feb. 28, 2019), <https://blog.aboutamazon.com/company-news/amazon-project-zero>; Amazon, Transparency, Frequently Asked Questions, <https://brandservices.amazon.com/transparency/faq>.

²³ See Amazon, Brand Protection Report, <https://brandservices.amazon.com/progressreport>.

regularly that detail removals on counterfeits, in addition to takedowns related to copyright and trademark claims and takedowns undertaken proactively.²⁴

- **Trust and certification programs.** Some services utilize certification and other indicator schemes that indicate to a user whether a seller has a history of customer satisfaction and complying with online services' policies.²⁵ Consumer reviews are also widely used, and services invest in ensuring reviews are authentic and trustworthy.²⁶
- **Proactive measures.** In enforcing their strict prohibitions against counterfeiting and piracy, many online services have robust proactive enforcement programs to detect and remove infringing content rather than merely removing content that is specifically reported to them.²⁷ These proactive programs not only remove infringing listings and posts, but disable entire accounts and prevent known counterfeiters from making new accounts.²⁸ Many are exploring ways to remove additional suspected counterfeit content on a proactive basis, implement repeat infringer policies and additional measures aimed at tackling recidivism, and developing machine learning tools to identify and remove content.²⁹
- **User education.** Online services provide information to users regarding counterfeits and intellectual property to help them avoid posting or sharing content that violates terms of

²⁴ See, e.g., Amazon's latest Brand Protection Report: How we're cracking down on counterfeit products, <https://www.aboutamazon.com/news/policy-news-views/amazon-brand-protection-report-2023-counterfeit-products>; Meta's IP Transparency Report, <https://transparency.fb.com/reports/intellectual-property>; Google, How Google Fights Piracy (2018), https://storage.googleapis.com/gweb-uniblog-publishprod/documents/How_Google_Fights_Piracy_2018.pdf.

²⁵ See eBay Top Rated Program, <https://pages.ebay.com/seller-center/service-and-payments/top-ratedprogram.html#what-is-top-rated-prog>.

²⁶ Amazon and the Better Business Bureau file a joint lawsuit to fight fake reviews (July 18, 2024), <https://www.aboutamazon.com/news/policy-news-views/amazon-better-business-bureau-file-lawsuit-on-fake-reviews>.

²⁷ See, e.g., Meta Newsroom, How We're Proactively Combating Counterfeits and Piracy (May 19, 2021), <https://about.fb.com/news/2021/05/how-were-proactively-combating-counterfeits-and-piracy/>.

²⁸ See, e.g., Meta, How Meta Helps Protect Against Counterfeits, <https://www.facebook.com/business/tools/anti-counterfeiting/guide>; Melissa Daniels, *Amazon says its stopped 700K counterfeiters from making accounts last year*, ModernRetail (Mar. 26, 2024), <https://www.modernretail.co/technology/amazon-says-its-stopped-700k-counterfeiters-from-making-accounts-last-year/>.

²⁹ See, e.g., Amazon, Anti-Counterfeiting Exchange, <https://trustworthyshopping.aboutamazon.com/anticounterfeitingexchange>; eBay Acquires 3PM Shield to Bring Advanced Marketplace Compliance Technology In-House (Feb. 13, 2023), <https://www.ebayinc.com/stories/news/ebay-acquires-3pm-shield-to-bring-advanced-marketplace-compliance-technology-in-house/>.

service.³⁰ Online services also encourage law enforcement agencies, rights owners, and consumer protection organizations to directly educate users by creating participant profile pages and public service campaigns.³¹

- **Coordination with law enforcement.** Many online services closely coordinate with domestic and international law enforcement agencies to better identify bad actors and to prevent illegal or infringing practices.³²
- **Pursuing legal action against bad actors.** Online services have partnered with rights holders to go after bad actors offline as well, by filing multiple lawsuits against counterfeiters in U.S. federal court.³³

The tools listed above are often accompanied by processes to address abuse, as well as appeals procedures for sellers and users to register complaints and contest removals. Not all tools will be effective or relevant for all online services; there should be flexibility to develop appropriate measures targeted to the issues or problems observed as business models of online services vary greatly across platforms.

IV. Internet Infrastructure Service Providers Should Not Be Targets of the Notorious Markets Proceeding.

A number of commenters, whether explicitly nominating the services or not, alleged the exploitation of content delivery networks (CDNs) to distribute pirated material online.³⁴ As

³⁰ See, e.g., Facebook IP Help Center, <https://www.facebook.com/help/399224883474207/>.

³¹ See, e.g., Meta, UNIFAB, ALPA and Meta Launch a Public Awareness Campaign on the Internet Against Counterfeiting and Piracy, <https://about.fb.com/fr/news/2023/03/lunifab-lalpa-et-meta-lancent-sur-internet-une-campagne-de-sensibilisation-du-grand-public-a-la-contrefacon-et-au-piratage/>.

³² See, e.g., Amazon, *A Blueprint for Private and Public Sector Partnership to Stop Counterfeiters* (Oct. 18, 2021), <https://www.aboutamazon.com/news/policy-news-views/a-blueprint-for-private-and-public-sector-partnership-to-stop-counterfeiters>; The latest from Amazon’s Counterfeit Crimes Unit: A new lawsuit targets invalid trademarks and fake complaints (Sept. 16, 2024), <https://www.aboutamazon.com/news/policy-news-views/amazon-counterfeit-crimes-unit-latest-updates-2024>.

³³ See, e.g., Meta’s Newsroom, *Facebook and Gucci File Joint Lawsuit Against International Counterfeiter*, <https://about.fb.com/news/2021/04/facebook-and-gucci-file-joint-lawsuit-against-international-counterfeiter/>; Meta’s Newsroom, *Meta and Christian Louboutin File Joint Lawsuit Against Counterfeiter*, <https://about.fb.com/news/2023/11/meta-and-christian-louboutin-file-joint-lawsuit-against-counterfeiter/>.

³⁴ Several commenters specifically name Cloudflare in their submissions. See, e.g., Comments of MPA, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0024> (“An example of a CDN and reverse proxy service frequently exploited by notorious markets to avoid detection and enforcement is Cloudflare. Cloudflare’s customers include some of the most notorious, long-standing pirate websites in the world, including the massively popular streaming sites vegamovies[.]im, cuevana[.]biz, and The Pirate Bay, whose current domain, thepiratebay[.]org, has been identified as infringing rights holders’ copyrights more than six million separate times”); Comments of The Football Association Premier League Limited, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0015> (“The

detailed above, such services are outside the scope of this proceeding. Further, at a structural level, it would be unreasonable to name CDNs or other internet infrastructure services suppliers in the Notorious Markets Report, as such providers are generally not able to intervene in instances of piracy occurring. As such, assigning liability or blame to these services would be unjustified, given they are generally unable to directly remedy the issues themselves, and, in most cases, these internet infrastructure providers actively participate in assisting rights holders with bringing their complaints to the entities that *can* remove the content.³⁵ In fact, many commenters acknowledge that the CDNs and reverse proxies are not the hosts and, in some cases, commenters specifically name the actual hosting service.³⁶ This demonstrates that these commenters understand that the CDNs and the reverse proxies do not actually have the ability to remove the content they complain about.

For the most part, internet infrastructure services do not have control over the content displayed or distributed by websites that use their services. In the case of a reverse proxy service, for example, the service provider's Internet Protocol addresses may appear in WHOIS and DNS records for websites using its services and, as such, they can be mistakenly characterized by stakeholders as a hosting provider. Despite this appearance, reverse proxy services do not host the websites and, as a result, are themselves unable to remove the content in question from the website. Many of these types of service providers—including CDNs, security

DSPs referenced in this submission were, between them, responsible for over 140,000 infringing live streams of Matches during Season 2023/24. In addition, during Season 2023/24, there were a further almost 85,000 infringing live streams delivered through Cloudflare's infrastructure in order to obfuscate the true identity of the responsible DSP, a large proportion of which the Premier League suspects would be attributable to the DSPs listed below"); Comments of Recording Industry Association of America, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0019>; Comments of Association of American Publishers, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0005>.

³⁵ See CCIA's submission to the European Commission's 2024 Consultation (Aug. 2024), <https://ccianet.org/wp-content/uploads/2024/08/Counterfeit-Piracy-Watch-List-CCIA-Europe-submission.pdf>.

³⁶ Several commenters specifically cite to the hosting provider committing the infringements, even while attempting to argue that the infrastructure providers are at fault. See Comments of Recording Industry Association of America, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0019> (citing, for example, infringers such as Savefrom, as the following: "Hosting Provider: Served through Cloudflare (U.S.); underlying hosting provider is OVH SAS (France)"); Comments of MPA, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0024>; Comments of Association of American Publishers, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0005>; Comments of The Football Association Premier League Limited, In Re 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, filed Oct. 2, 2024, <https://www.regulations.gov/comment/USTR-2024-0013-0015>.

providers, and Virtual Private Networks (VPNs)—similarly route internet queries to locations other than the original host, as this strengthens security and privacy.

Further, internet infrastructure providers pursue numerous initiatives to assist rights holders with reports of intellectual property infringement. CDNs achieve this by facilitating communication with rights holders and website operators to address their complaints.³⁷ Responsible actors in the internet infrastructure space have abuse reporting processes established specifically to provide rights holders with an avenue for reporting alleged infringement to the entities—such as hosting service providers and/or owners of the website domain alleged to have committed IP abuses—that actually have the ability to remove the content from the internet. There are often also additional pathways available through Trusted Reporter Programs. Internet infrastructure suppliers also often provide intellectual property rights holders with cybersecurity services needed to protect their websites from data scraping and cyberattacks. This represents another way in which internet infrastructure providers work to target the online presence of intellectual property rights holders’ content in other risk areas by leveraging their core capabilities.

V. Conclusion

Based on these assessments, it is wholly inappropriate to conflate U.S. firms that utilize extensive anticounterfeiting and antipiracy measures with rogue foreign bad actors by naming them in the 2024 Notorious Markets Report. Industry remains fully committed to the protection of intellectual property rights and stands ready to work with the U.S. government and other relevant stakeholders to combat any problems in the marketplace.

Respectfully submitted,

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October 16, 2024

³⁷ See, e.g., Cloudflare, *Our approach to abuse* (last accessed Oct. 10, 2024), <https://www.cloudflare.com/trust-hub/abuse-approach/>; Cloudflare, *Assisting copyright holders* (last accessed Oct. 10, 2024), <https://www.cloudflare.com/trust-hub/assisting-copyright-holders/>.